

**ATTACHMENT A**  
**DEPARTMENT OF WORKFORCE SERVICES**  
**SPECIAL TERMS AND CONDITIONS**

*For funding subject to the federal reporting requirements in place after December 26, 2014*

1. **PRIVATE FINANCIAL INTEREST:** CONTRACTOR certifies, through the execution of the Contract, that no person in its and DWS's employment, directly or through subcontract, will receive any private financial interest, direct or indirect, in the Contract. CONTRACTOR will not hire or subcontract with any person having such conflicting interest(s).
2. **CITING DWS IN ADVERTISING:** CONTRACTOR agrees to give credit to DWS for funding in all written and verbal advertising or discussion of this program such as brochures, flyers, informational materials, talk shows, etc. All formal advertising or public information programs will be coordinated with the Public Information Officer for DWS.
3. **IMPOSITION OF FEES:** CONTRACTOR will not impose any fees upon clients provided services under this Contract except as authorized by DWS.
4. **CODE OF CONDUCT** (attached if applicable): CONTRACTOR agrees to follow and enforce DWS's Code of Conduct, Utah Administrative Code, R982- 601-101 et seq. CONTRACTOR agrees that each of its employees or volunteers receive a copy of the Code of Conduct. A signed statement by each employee or volunteer to this effect must be in employee's/volunteer's file subject to inspection and review by DWS monitors.
5. **HUMAN-SUBJECTS RESEARCH:** CONTRACTOR shall not conduct research involving employees of DWS or individuals receiving services (whether direct or contracted) from DWS.
6. **DRUG-FREE WORKPLACE:** CONTRACTOR agrees to abide by DWS' drug- free workplace policies while on DWS premises.
7. **LICENSING AND STANDARD COMPLIANCE:** By signing this agreement CONTRACTOR acknowledges that it currently meets all applicable licensing or other standards required by federal and state laws or regulations and ordinances of the city/county in which services and/or care is provided and will continue to comply with such licensing or other applicable standards and ordinances for the duration of this Agreement period. Failure to secure or maintain a license shall support a basis for cancellation of this Agreement.  
For CONTRACTORS receiving any Federal funds: By signing this Agreement, CONTRACTOR certifies it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal programs or activities. See the provisions on government-wide suspension and debarment in 2 CFR §200.205(d), Appendix II to Part 200 - Paragraph (H), and 2 CFR part 180 which implements Executive Orders 12549 and 12689 for further clarification.

CONTRACTOR acknowledges that it is responsible for familiarizing itself with these laws and regulations, and complying with all of them.

8. **COMPLIANCE WITH GENERALLY APPLICABLE STATE AND FEDERAL LAWS:**
  - a. CONTRACTOR is required to comply with all anti-discrimination and drug-free workplace laws, and all laws governing research involving human subjects. If CONTRACTOR is receiving federal funds under this Contract the following federal laws may apply: Equal Opportunity Employer Executive Order, the Davis-Bacon Act, the Hatch Act, the Copeland "Anti-Kickback" Act, the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, the Clean Air Act, the Federal Water

Pollution Control Act, the Byrd Anti-Lobbying Amendment, and the Debarment and Suspension Executive Orders.

CONTRACTOR shall comply with these laws and regulations to the extent they apply to the subject matter of this Contract.

- b. Equal Opportunity: Section 188 of the Workforce Investment Act of 1998 (WIA) prohibits discrimination against all individuals in the United States on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship or participation in any WIA Title I-financially assisted program or activity. Prohibitions against discrimination are made on the basis of the following:
  - i. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color, and national origin, which includes discrimination affecting persons with limited English proficiency;
  - ii. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
  - iii. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age;
  - iv. And Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs.
- c. If applicable, CONTRACTOR will provide an explanation of the client's rights and protections under 29 CFR Part 37. CONTRACTOR will also provide a copy of DWS's Equal Opportunity Notice (English or Spanish version, DWS 09-15E-0900NCR or 09-15S-0201 respectively) to the client and maintain a copy in the client file.

## 9. **CONTRACTOR ASSIGNMENT AND SUBCONTRACTORS**

- a. Assignment: Notwithstanding DWS's right to assign the rights or duties hereunder, CONTRACTOR agrees and understands that this Contract is based on the reputation of CONTRACTOR, and this Contract may not be assigned by CONTRACTOR without the written consent of DWS. Any assignment by CONTRACTOR without DWS's written consent shall be wholly void.
- b. Subcontractors: As used in this Contract, the term "subcontractor" means an individual or entity that has entered into an agreement with the original CONTRACTOR to perform services or provide goods, which the original CONTRACTOR is responsible for under the terms of this Contract. Additionally, the term "subcontractor" also refers to individuals or entities that have entered into agreements with any subcontractor if: (1) those individuals or entities have agreed to perform all or most of the subcontractor's duties under this Contract; or (2) federal law requires this Contract to apply to such individuals or entities. If CONTRACTOR enters into subcontracts the following provisions apply:
  - i. Duties of Subcontractors: Regardless of whether a particular provision in this Contract mentions subcontractors, a subcontractor must comply with all provisions of this Contract including, but not limited to, the state procurement requirements, insurance requirements and the fiscal and program requirements. CONTRACTOR retains full responsibility for Contract compliance, whether the services are provided directly or by a subcontractor.
  - ii. Provisions Required in Subcontracts: If CONTRACTOR enters into any subcontracts with other individuals or entities and pays those individuals or entities for such goods or services with federal or state funds, CONTRACTOR

must include provisions in its subcontracts regarding the federal and state laws identified in this Contract, if applicable ("CONTRACTOR'S Compliance with Applicable Laws; Cost Accounting Principles and Financial Reports,") as well as other laws and contract provisions identified in 45 C.F.R. §92.36(i).

10. **MONITORING:**

- a. DWS shall have the right to monitor CONTRACTOR'S performance regarding all services purchased under this Agreement. Monitoring of CONTRACTOR'S performance shall be at the complete discretion of DWS which will include but is not limited to the CONTRACTOR'S fiscal operations, and the terms, conditions, attachments, scope of work, and performance requirements of this contract. Monitoring may include both announced and unannounced visits. Monitoring will take place during normal business hours.
- b. If it is discovered through monitoring that the CONTRACTOR is in default, the CONTRACTOR may be subject to sanctions which may include warnings, audits, temporary suspension of payments, termination, demand for the return of funds and or suspension/debarment from participation in future DWS grants and contracts. Default may also result in the cancellation of other agreements between the CONTRACTOR and DWS.
- c. Client or CONTRACTOR Staff Satisfaction Surveys: CONTRACTOR understands that DWS is committed to providing customer-oriented services, and that DWS often conducts customer-satisfaction surveys as a part of monitoring. CONTRACTOR agrees to cooperate with all DWS-initiated customer feedback.

11. **NOTIFICATION OF THE INTERNAL REVENUE SERVICE:** It is DWS'S policy to notify the Internal Revenue Service of any violations of IRS regulations uncovered as a result of its dealings with providers.

12. **CONTRACT RENEWAL:** Renewal of contract will be solely at the discretion of DWS.

13. **CONTRACT TERMINATION:**

- a. **Termination for Cause:** This contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. DWS will give the CONTRACTOR only one opportunity to correct and cease the violations.
- b. **Immediate Termination:** If CONTRACTOR creates or is likely to create a risk of harm to the clients served under this Contract, or if any other provision of this Contract (including any provision in the attachments) allows DWS to terminate the Contract immediately for a violation of that provision, DWS may terminate this Contract immediately by notifying CONTRACTOR in writing. DWS may also terminate this contract immediately for fraud, misrepresentation, misappropriation, and/or mismanagement as determined by DWS.
- c. **No-Cause Termination:** This Contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. Upon termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
- d. **Fund-Out Termination:** CONTRACTOR acknowledges that DWS cannot contract for the payment of funds not yet provided by the Federal Government or appropriated by the Utah State Legislature and DWS cannot guarantee funding under this Contract since it may be altered by an act of the Federal Government or the Utah State Legislature occurring before the expiration of this Contract. Therefore, in the event that DWS fails to receive appropriations then DWS may, by giving at least 30 days

advance written notice, terminate this Contract. DWS will reimburse CONTRACTOR for services performed up through the date of cancellation.

- e. **Attorneys' Fees and Costs:** If either party seeks to enforce this Contract upon a breach by the other party, or if one party seeks to defend itself against liability arising from the negligence of the other party, the prevailing party shall receive from the unsuccessful party all court costs and its reasonable attorneys' fees, regardless of whether such fees are incurred in connection with litigation.
  - f. **Remedies for CONTRACTOR'S Violation:**
    - 1. In the event this Contract is terminated as a result of a default by CONTRACTOR, DWS may procure or otherwise obtain, upon such terms and conditions as DWS deems appropriate, services similar to those terminated, and CONTRACTOR shall be liable to DWS for any damages arising there from, including attorneys' fees and excess costs incurred by DWS in obtaining similar services.
    - 2. CONTRACTOR acknowledges that if CONTRACTOR violates the terms of this Contract, DWS is entitled to avail itself of all available legal, equitable and statutory remedies including, but not limited to, money damages, injunctive relief and debarment as allowed by state and federal law.
14. **BILLINGS AND PAYMENTS:** Payments to CONTRACTOR will be made by DWS upon receipt of itemized billing for authorized service(s) supported by appropriate documentation. Billings and claims for services must be received within thirty (30) days after the last date of service for the period billed including the final billing, which must be submitted within thirty (30) days after contract termination or they may be delayed or denied. DWS must receive billing for services for the month of June no later than July 15<sup>th</sup> due to DWS's fiscal year end. Billings submitted after this date may be denied.
- DWS will not allow claims for services furnished by CONTRACTOR, which are not specifically authorized by this contract.
15. **PAYMENT RATES (Does not apply to contracts with DWS set rates or fee-for-performance rates):** Initial payment rates for negotiated contracts may be calculated based on actual expenditures for prior period, available budget and changes in the type or quality of service. The rates may be adjusted up or down during the Contract term in accordance with prior paid actual costs or a review of current costs verified by audit or fiscal review. Such a rate adjustment may be retroactive to the beginning of the Contract. Rates for contracts awarded as a result of the competitive bidding process will not be changed during the Contract term.
16. **PAYMENT WITHHOLDING:** CONTRACTOR agrees that the reporting and record keeping requirements specified in this Contract are a material element of performance and that if, in the opinion of DWS, CONTRACTOR'S record keeping practices and/or reporting to DWS are not conducted in a timely and satisfactory manner, DWS may withhold part or all payments under this or any other Contract until such deficiencies have been remedied. In the event of the payment(s) being withheld, DWS agrees to notify CONTRACTOR of the deficiencies that must be corrected in order to bring about the release of withheld payment.
17. **OVERPAYMENT/AUDIT EXCEPTIONS/DISALLOWANCES:** CONTRACTOR agrees that if during or subsequent to the CONTRACTOR'S CPA audit or DWS determines that payments were incorrectly reported or paid, DWS may amend the Contract and adjust the payments. To be eligible for reimbursement, CONTRACTOR expenditures must be adequately documented. Upon written request, CONTRACTOR will immediately refund to DWS any overpayments, as determined by audit. CONTRACTOR further agrees that DWS shall have the right to withhold any or all subsequent payments under this or other contracts with CONTRACTOR until recoupment of overpayment is made.

18. **REDUCTION OF FUNDS:** The maximum amount authorized by this Contract shall be reduced or Contract terminated if required by federal/state law, regulation, action or if there is significant under-utilization of funds, provided CONTRACTOR shall be reimbursed for all services performed in accordance with this Contract prior to date of reduction or termination. If funds are reduced, there will be a comparable reduction in amount of the services to be given by CONTRACTOR. DWS will give CONTRACTOR thirty (30) days' notice of reduction.
19. **PRICE REDUCTION FOR INCORRECT PRICING DATA:** If any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract was increased by any significant sum because CONTRACTOR furnished cost or pricing data (e.g., salary schedules, reports of prior period costs, etc.) which was not accurate, complete and current, the price or cost shall be reduced accordingly. The Contract may be modified in writing as necessary to reflect such reduction, and amounts overpaid shall be subjected to overpayment assessments. Any action DWS may take in reference to such price reduction shall be independent of, and not be prejudicial to, DWS'S right to terminate this Contract.
20. **FINANCIAL/COST ACCOUNTING SYSTEM:** CONTRACTOR agrees to maintain a financial and cost accounting system in accordance with the Generally Accepted Accounting Principles ("GAAP"), issued by the American Institute of Certified Public Accountants; or the "Governmental GASB," issued by the United States Governmental Accounting Standards Board. An entity's accounting basis determines when transactions and economic events are reflected in its financial statements. An entity may record its accounting transactions and events on a cash basis, accrual basis, or modified accrual basis. According to GAAP and Governmental GASB, the cash method of accounting is not appropriate for governmental entities; the accrual basis and modified accrual basis of accounting are the preferred methods. CONTRACTOR further agrees that all program expenditures and revenues shall be supported by reasonable documentation (vouchers, invoices, receipts, etc.), which shall be stored and filed in a systematic and consistent manner. CONTRACTOR further agrees to retain and make available to independent auditors, state and federal auditors, and program and contract reviewers all accounting records and supporting documentation for a minimum of four (4) years after the expiration of this Contract. CONTRACTOR further agrees that, to the extent it is unable to reasonably document the disposition of monies paid under this Contract, it is subject to an assessment for over-payment.
21. **PROTECTION AND USE OF CLIENT RECORDS:** Use by any party of any information concerning a client for any purpose not directly connected with the administration of DWS'S or CONTRACTOR'S responsibilities with respect to services purchased under this agreement is prohibited except on written consent of the client, their attorney, or responsible parent or guardian. CONTRACTOR is required to sign DWS'S disclosure statement.
22. **DWS COST PRINCIPLES FOR COST REIMBURSEMENT CONTRACTS:**
- a. Federal cost principles determine allowable costs in DWS agreements. They can be found in publications by the Federal Office of Management and Budgets ("OMB"). CONTRACTOR may locate the Federal Cost Principles applicable to its organization by searching the appropriate federal government websites.
  - b. Compliance with Federal Cost Principles: For CONTRACTOR'S convenience, DWS provides Table 1 below, "Cost Principles," as a reference guide to the applicable cost principles. However, the information in this table is not exhaustive, and CONTRACTOR understands that it is obligated to seek independent legal and/or accounting advice. As shown in Table 1, "Cost Principles," the principles

applicable to a particular CONTRACTOR depend upon CONTRACTOR'S legal status.

**Table 1: Cost Principles**

<b>Subrecipient</b>	<b>Federal Cost Principles</b>
State/Local/Indian Tribal Governments	2 CFR 200 Subpart E
College or University	
Non-Profit Organization	
For-Profit Entity	48 CFR Part 31.2

a. Compensation for Personal Services - Additional Cost Principles:

In addition to the cost principles in the federal circulars concerning compensation for personal services, the following cost principles also apply:

- i. The portion of time a person devotes to a program should be disclosed in the budget as a percent of 40 hours per week.
- ii. Employees who are compensated from one or more contracts or from programmatic functions must maintain time reports, which reflect the distribution of their activities.
- iii. For persons occupying any managerial position (administration or program management), total work time from all work, including outside employment and participation in other entities, must be disclosed. If total work time exceeds 40 hours and CONTRACTOR wants reimbursement for the time devoted to DWS programs over 40 hours, the following two conditions must be met: 1) A perpetual time record must be maintained and 2) Prior written approval must be obtained from DWS'S Finance- Contracting Division.
- iv. Compensation for Personal Expenses: DWS will not reimburse CONTRACTOR for personal expenses. For example spouse travel when the travel costs of the spouse are unrelated to the business activity, telecommunications and cell phones for personal use, undocumented car allowances, payments for both actual costs of meals and payments for per diem on the same day, and business lunches (not connected with training).

- d. Third-Party Reimbursement And Program Income: CONTRACTOR is required to pursue reimbursement from all other sources of funding available for services performed under this Contract. Other sources of funding include, but are not limited to, third party reimbursements and program income. In no instance shall any combination of other sources of funding and billings to DWS be greater than "necessary and reasonable costs to perform the services" as supported by audited financial records. Collections over and above audited costs shall be refunded to DWS.

23. **ADMINISTRATIVE EXPENDITURES:** If allowed by the budget terms of this Agreement, the DWS will reimburse administrative expenditures as follows: administrative costs (both direct and indirect) cannot exceed 10% of the total budget. CONTRACTORS with approved indirect cost rates must provide the DWS with their approval letter from the federal cognizant agency. CONTRACTORS without a federally approved indirect cost rate are limited to an indirect cost rate of 10%.
24. **CHANGES IN BUDGET (cost reimbursement contracts only):** The budget attached hereto shall be the basis for payment. CONTRACTOR may not make any adjustment in budgeted funds from Category III, "Program Expenses" to either Category I,

“Administration” or Category II, “Capital Expenditures” or between Categories I and II, without prior written approval by DWS. Expenditures in excess of those budgeted in either Category I or II may be considered questioned costs.

Resolution of such questioned costs will normally result in a request that such excesses be refunded to DWS. CONTRACTOR may, however, shift between either Category I or II to Category III without prior approval. Expenditures in excess of those budgeted in Category III will not normally result in questioned costs unless restrictions have been placed on subcategories within this major category. When the Contract restricts expenditures within defined subcategories, any unapproved excess will be considered a questioned cost.

25. **COPYRIGHT:** If the CONTRACTOR develops or pays to have developed materials exclusively with funds or proceeds from this Contract to perform its obligations under this Contract, or to perform tasks that it was not previously performing to meet its obligations under this Contract, the CONTRACTOR may establish, with prior notification to DWS, claim to copyright on such materials. DWS reserves a royalty- free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use for Federal or State Government purposes:
- a. The copyright in any work developed under a contract, grant, subgrant, or contract under a grant or subgrant; and
  - b. Any rights of copyright to which a contractor/subcontractor purchases ownership with grant or contract support.

26. **REQUIRED INSURANCE:**

- a. *General Liability Insurance and/or Comprehensive General Liability Insurance:* To protect against liability, loss and/or expense in connection with CONTRACTOR'S performance described under this contract, CONTRACTOR shall obtain and maintain in force during the entire period of this contract without interruption, at its own expense, insurance from an insurance company authorized to do business in the State. CONTRACTOR must maintain General Liability Insurance and/or Comprehensive General Liability Insurance, including coverage for premises/operations, explosion, collapse and underground hazards, products/completed operations, contractual (including this contract), and personal injury, including employees with policy limits not less than one million dollars (\$1,000,000.00) each occurrence and three million dollars (\$3,000,000.00) in the aggregate during the term of this contract. Aggregate limit shall be designated as applying to this contract. If this insurance coverage is written on a "claims made" basis, the certificate of insurance required below shall so indicate and the policy shall contain an extended reporting period provision or similar 'tail' provision such that claims reported up to three (3) years beyond the date of Substantial Completion of this contract are covered. The carrying of insurance required by this contract shall not be interpreted as relieving the CONTRACTOR of any other responsibility or liability under this contract or any applicable law, statute, rule, regulation, or order.
- i. CONTRACTOR must provide proof of insurance to DWS and must add DWS as an additional insured with notice of cancellation. Before signing this Contract, a non-governmental CONTRACTOR or Subcontractor shall obtain from its insurer(s) and shall provide to DWS certificates of insurance and "additional insured" endorsements indicating the required coverage is in effect and that the insurer shall give DWS thirty (30) days' notice of any modification, cancellation or non-renewal of the policy. On an annual basis and upon request from DWS, a non-governmental CONTRACTOR or Subcontractor shall

provide DWS with evidence that the CONTRACTOR or Subcontractor has the insurance coverage required by this Contract.

- ii. Governmental entities are not required to provide certificates of insurance, "additional insured" endorsements or evidence of continued coverage.
  - iii. It shall be the responsibility of CONTRACTOR to require any of their Subcontractor(s) to secure the same insurance coverage as prescribed herein for the CONTRACTOR.
- b. *Automobile Insurance:* If the CONTRACTOR'S services involve transporting any clients or goods for the DWS, the CONTRACTOR shall maintain a policy of automobile liability insurance covering property damage, personal injury protection, and liability for the vehicles used by the CONTRACTOR (including owned, hired and non-owned vehicles.) The policy shall provide for a combined single limit, or the equivalent, of not less than \$1,000,000. If the CONTRACTOR subcontracts with another entity or individual for transportation services, or services that include transportation services, the CONTRACTOR may satisfy this insurance requirement by submitting proof that the Subcontractor has complied with the requirements of the "Insurance and Indemnification" section of this Contract.
- c. *Professional Liability Insurance:* If the CONTRACTOR employs doctors, dentists, social workers, mental health therapists or other professionals to provide services under this Contract, the CONTRACTOR shall maintain a policy of professional liability insurance with a limit of not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate. This professional liability insurance ("malpractice insurance") shall cover damages caused by errors, omissions or negligence related to the professional services provided under this Contract.
- d. *Workers' Compensation and Employers' Liability Insurance:* CONTRACTOR shall maintain during the term of this contract, workers' compensation insurance for all its employees as well as any subcontractor employees related to this contract. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction. CONTRACTOR must provide proof of insurance to DWS and must add DWS as an additional insured with notice of cancellation. CONTRACTOR acknowledges that within thirty (30) days of contract award, the CONTRACTOR and/or CONTRACTOR'S subcontractors must submit proof of certificate of insurance meeting the above requirements.

**THE FOLLOWING PARAGRAPHS APPLY TO CONTRACTS FUNDED THROUGH THE WORKFORCE INVESTMENT ACT (WIA)**

27. **SALARY AND BONUS LIMITATIONS:** In compliance with Public Law 110-5 and 109-234, none of the funds under this contract that are available for expenditure on or after June 15, 2006, shall be used by the CONTRACTOR to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109-149. See Training and Employment Guidance Letter (TEGL) number 5-06 for further clarification.
28. **STAND-IN COSTS:** Stand-in costs are non-federal costs that may be substituted for disallowed contract costs when certain conditions are met. Stand-in costs must meet the following criteria: To be considered, proposed stand-in costs must have been actually incurred allowable contract costs that have not been charged to the contract, included within the scope of the CONTRACTOR'S audit, and accounted for in the CONTRACTOR'S financial system



required by 29 CFR Part 97 or 95 as appropriate. To be accepted, stand-in costs must come from the same year as the costs that they are proposed to replace, and they must not cause a violation of the administrative or other cost limitations. Stand-in costs must be reported to DWS through the Cost Reimbursement form.

29. **PROGRAM INCOME:** Program income is defined in 29 CFR 97.25(b) and is the gross income received by the CONTRACTOR directly generated by a contract- supported activity, or earned only as a result of the contract during the contract period. A similar definition is found in 29 CFR Part 95.2(bb). A list of the types of income that are considered program income for purposes of WIA is included in 29 CFR 97.25(a) and 29 CFR Part 95.2(bb). Program income must be reported to DWS through the Cost Reimbursement report and must be expended prior to any requesting any contract funds for reimbursement.
30. **LEVERAGED FUNDS:** Leveraged funds are defined as any funds which have been expended for the same purposes and are allowable expenses under the contract funds but were paid by other federal resources within the CONTRACTOR'S accounting records. Leveraged funds are to be reported to DWS through the Cost Reimbursement report and be tracked and quantifiable within the CONTRACTOR'S accounting records.